

MEMORANDUM

JULY 12, 1984

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: SOUTH END URBAN RENEWAL AREA, PROJECT NO. MASS. R-56
FINAL DESIGNATION OF REDEVELOPER
REUSE PARCELS 9D AND 9E/ST. CLOUD/MYSTIC BRIDGE
557-569 TREMONT STREET

Summary: This memorandum requests that the Authority finally designate Boston Center for the Arts and Chestnut Development Associates, Joint Ventures, as Redeveloper of Reuse Parcels 9D and 9E, located at 557-569 Tremont Street in the South End Urban Renewal Area.

On May 12, 1983, Boston Center for the Arts and Chestnut Development Associates, Joint Ventures, were tentatively designated as Redeveloper of Reuse Parcels 9D and 9E in the South End Urban Renewal Area Project No. Mass. R-56. Parcel 9D, a mixed-use, four and five story brick building and Parcel 9E, a mixed-use, five story brick building are bounded by Union Park, Tremont, Clarendon and Montgomery Streets, and consist of approximately 6,140 square feet of land.

The Joint Ventures have proposed to redevelop the properties into a mixed-use condominium development consisting of 23 market-rate residential units (19,375 square feet), 9 below market artists' studios (5,970 square feet), and art related ground floor commercial/restaurant (10,200 square feet).

The Joint Ventures will retain ownership of and lease the nine artists' studios to low and moderate income artists. A deed restriction will control the occupancy of these units. Rents will not exceed 30% of the income of tenants whose income cannot exceed 80% of the metropolitan median.

As a condominium development, the properties will be removed from the Boston Center for the Arts' lease, and upon final designation, will be conveyed in accordance with a Land Disposition Agreement controlling this mixed-use development. The financial analysis of the development as determined by Authority staff indicates that the project should pay an additional \$37,500 in disposition proceeds and the developer has agreed to this increased payment. The Land Disposition Agreement will specify the details of how the joint venture will redevelop the buildings and sell the 23 market-rate residential units, but be required to retain ownership of the studios and commercial space to ensure the mixed-use and mixed-income desired by the Authority and the community. A condominium trust will be created governing the entire property and eventual management of the properties will be subject to this trust.

The total redevelopment cost of the proposed St. Cloud/Mystic Bridge development has been estimated at \$2,250,000. According to the financial information provided, it has been indicated that the Joint Ventures have a firm financial commitment of \$2,250,000 from the United States Trust Company to finance the redevelopment project.

In addition, the Joint Ventures have complied with all aspects and specifications of the Urban Renewal Plan, by submitting final working drawings which have been reviewed and approved by the Authority's Urban Design Department.

I, therefore, recommend Boston Center for the Arts and Chestnut Development Associates, Joint Ventures, as Redeveloper of Parcels 9D and 9E in the South End Urban Renewal Area.

An appropriate Resolution is attached.

CERTIFICATE OF VOTE

The undersigned hereby certifies as follows:

(1) That he is the duly qualified and Acting Secretary of the Boston Redevelopment Authority, hereinafter called the Authority, and the keeper of the records, including the journal of proceedings of the Authority.

(2) That the following is a true and correct copy of a vote as finally adopted at a meeting of the Authority held on August 29, 1984. and duly recorded in this office:

Mr. Simonian brought to the attention of the Board that an error in the name of the redeveloper who received final designation July 12, 1984, for Reuse Parcels 9D and 9E in the South End Project, No. Mass. R-56. Mr. Simonian pointed out that the correct name of the redeveloper is Boston Center for the Arts and Chestnut Associates, Joint Venture, and requested that a vote be taken to formalize this correction by changing the name of the designated developer.

On motion duly made and seconded, it was unanimously

VOTED: That the Authority hereby approves a change in the name of the designated redeveloper approved on July 12, 1984, for Reuse Parcels 9D and 9E, in the South End Project, No. Mass. R-56, from Boston Center for the Arts and Chestnut Development Associates, Joint Venture, to Boston Center for the Arts and Chestnut Associates, Joint Venture; and further authorizes that the Resolution and other appropriate documents pertaining to same be corrected accordingly.

(3) That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting, and a legally sufficient number of members of the Authority voted in a proper manner and all other requirements and proceedings under law incident to the proper adoption or the passage of said vote have been duly fulfilled, carried out and otherwise observed.

(4) That the Resolution (Doc # 4478)
to which this certificate is attached is in substantially the form as that presented to said meeting.

(5) That if an impression of the seal has been affixed below, it constitutes the official seal of the Boston Redevelopment Authority and this certificate is hereby executed under such official seal.

(6) That Stephen Coyle is the Director
of this Authority.

(7) That the undersigned is duly authorized to execute this certificate.

IN WITNESS WHEREOF the undersigned has hereunto set his hand this
fourth day of October, 19 84.

BOSTON REDEVELOPMENT AUTHORITY

By Kenneth J. Minahan
Secretary

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RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY
RE: FINAL DESIGNATION OF REDEVELOPER
APPROVAL OF FINAL WORKING DRAWINGS AND SPECIFICATIONS
AND PROPOSED DISPOSITION OF PARCEL 9D and 9E
IN THE SOUTH END URBAN RENEWAL AREA
PROJECT NO. MASS. R-56

WHEREAS, the Boston Redevelopment Authority, (hereinafter referred to as the "Authority"), has entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the hereinafter identified Project; and

WHEREAS, the Urban Renewal Plan for the South End Urban Renewal Area, Project No. Mass. R-56, (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with local, State and Federal law; and

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with Federal financial assistance under said Title I, including those prohibiting discrimination because of race, color, sex, religion or national origin; and

WHEREAS, Boston Center for the Arts and Chestnut Development Associates have expressed an interest in and/or have submitted a satisfactory proposal for the development of Disposition Parcel 9D and 9E in the South End Urban Renewal Area; and

WHEREAS, the Authority is cognizant of Chapter 30, Sections 61 through 62H of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment:

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

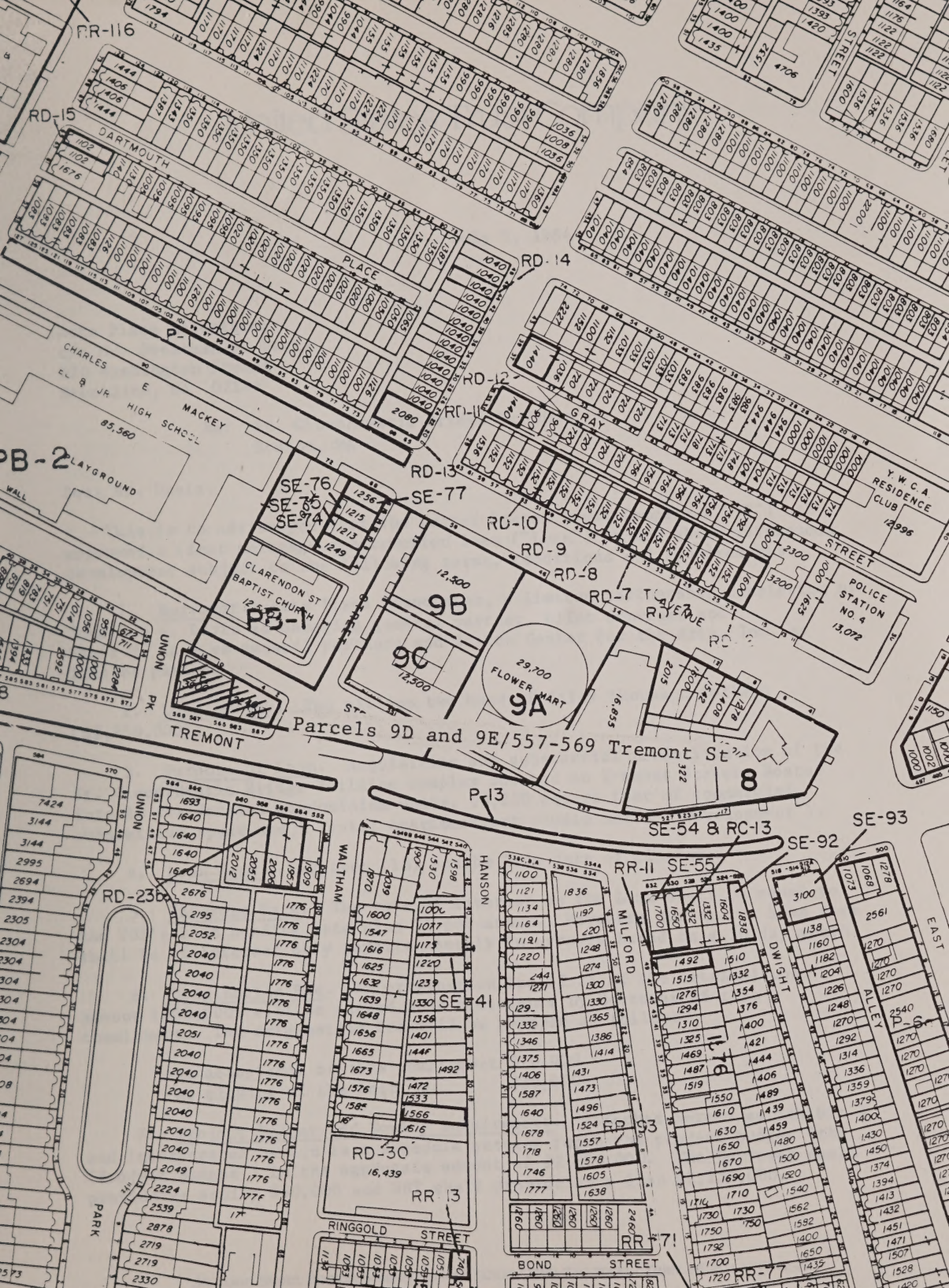
1. That Boston Center for the Arts and Chestnut Development Associates be and hereby are finally designated as Redeveloper(s) of Parcel 9D and 9E in the South End Urban Renewal Area.
2. That it is hereby determined that Boston Center for the Arts and Chestnut Development Associates possess the qualifications and financial resources necessary to acquire and develop the land in accordance with the Urban Renewal Plan for the Project Area.
3. That disposal of said Parcel by negotiation is the appropriate method of making the land available for redevelopment.
4. That as a condominium development, the properties will be removed from the Boston Center for the Arts' lease, and upon final designation, will be conveyed in accordance with a Land Disposition Agreement controlling this mixed-use development.

5. That the Final Working Drawings and Specifications submitted by Boston Center for the Arts and Chestnut Development Associates for the development of Parcel 9D and 9E conform in all respects to the Urban Renewal Plan for the Project Area, and that said Final Working Drawings and Specifications be and hereby are approved.

6. That it is hereby found and determined that the proposed development will not result in significant damage to or impairment of the environment and further, that all practicable feasible means and measures have been taken and are being utilized to avoid or minimize damage to the environment.

7. That the Director is hereby authorized for and in behalf of Boston Redevelopment Authority to execute and deliver a Land Disposition Agreement and Deed in consideration of receipt of \$37,500 in additional disposition proceeds conveying Parcel 9D and 9E to Boston Center for the Arts and Chestnut Development Associates, said documents to be in the Authority's usual form.

8. That the Secretary is hereby authorized and directed to publish notice of the proposed disposal transaction in accordance with Section 105(E) of the Housing Act of 1949, as amended, including information with respect to the "Redeveloper's Statement for Public Disclosure" (Federal Form H-6004).



United States Trust Company

July 9, 1984

Arts Plaza Associates
c/o Mr. Jonathan G. Davis
320 Washington Street
Brookline, MA 02146

Re: St. Cloud/Mystic Bridge Building
Boston, MA

Dear Mr. Davis:

This is to advise you that the United States Trust Company ("UST") has approved a first mortgage construction loan ("Loan") on the above referenced development subject to the following terms, conditions and requirements:

1. Borrower. Arts Plaza Associates, a limited partnership consisting of Jonathan G. Davis as managing general partner, Eliot Conviser and Roger P. Lang as general partners and Boston Center for the Arts, Inc. as limited partner.

2. Loan Amount. Two million two hundred fifty thousand dollars (\$2,250,000).

3. Purpose of Loan. Acquisition and substantial rehabilitation of the St. Cloud/Mystic Bridge Building complex located on Tremont Street, Boston into 23 residential condominium units, 10,200 square feet of commercial condominium space and 9 rental apartment/art studio units ("Development").

4. Loan Term. Eighteen (18) months from date of closing.

5. Interest Rate. The rate of interest on the Loan shall be equal to the UST's Best Lending Rate plus 2% per annum. Payments during the Loan term shall be of interest only payable monthly in arrears based on a 30 day month.

6. Origination Fee. An origination fee of 2% of the original Loan amount (\$45,000) will be earned upon acceptance by Borrower of this commitment. The origination fee will be payable as follows:

At acceptance of this commitment	\$10,000
At closing of the Loan	\$35,000

7. Project Budget and Equity Requirement. Attached hereto as Exhibit A and incorporated herein is a schedule setting forth the project budget (the "Project Budget") in the aggregate amount of \$2,300,000. The Borrower shall provide as equity \$50,000 and UST shall provide as a loan \$2,250,000.

8. Security. The following shall be given as collateral to secure the Borrower's performance and payment obligations:

A. A first mortgage on the land and the improvements to be constructed thereon.

B. A first security interest in all personal property of the Borrower, equipment and fixtures not otherwise included in the mortgage from time to time located at the premises, and specifically including, in addition to the foregoing, a lien on all materials not integrated into construction for which Loan funds are advanced and also including all sales deposits received on all units sold. No portion of the collateral given to secure the Loan shall be leased by or to the Borrower.

C. A first lien by assignment of the rents, leases and profits which may from time to time be realized in connection with the Development. This assignment shall call for exercise by UST only in the event of default by Borrower under the Loan closing documents.

D. A first lien assignment of Borrower's Rights as owner and developer of unsold condominium units and under any unit purchase and sale agreements, including an assignment of any deposits given to secure the purchase of a unit.

E. Assignment of plans and specifications.

F. The unconditional guaranty of repayment, completion and performance of Jonathan G. Davis, Eliot Conviser, and Roger P. Lang.

G. Assignment of the Borrower's contracts with Kaplan Corp. and the project architect, Arrowstreet, and any other contract for the construction, furnishing or equipping of the Development of which the Borrower is a direct party.

H. Any additional collateral and security specified under this commitment letter or in the construction loan agreement.

9. Assignment of Construction Contract. Prior to closing, the Borrower shall enter into a construction contract with Kaplan Corp.. The construction contract shall commit the contractor to complete the Development at a price and on terms calculated so as not to exceed \$1,800,000. The contract with the general contractor will contain an "upset" date and in all other respects be satisfactory to UST. The contract shall grant to UST the option to require the contractor to complete construction of the Development in the event the Borrower defaults under the Loan documents on the following terms and conditions: the contractor shall agree to complete the Development at prices not exceeding the ceilings referenced above after deducting an allocable amount for construction then completed; the contractor shall be entitled to be paid by UST only for materials, labor and services delivered and/or referenced to the Development commencing on the date UST elects to continue the contract; the contractor shall agree to look to the Borrower for payment of previously delivered and rendered materials, labor and services; and the rights of UST as assignee under the construction contract may be exercised by its designee or assignee.

10. Contractors Bond. The contractor shall provide a performance bond and a material payment bond for a minimum of 100% of the construction contract. UST shall be named as dual obligee thereunder.

11. Construction Loan Agreement. A Construction Loan Agreement ("Loan Agreement") shall be executed between the Borrower and UST at closing. It is specifically understood and agreed that at the time of the first disbursement of the Loan and at all times thereafter, there shall remain sufficient unadvanced Loan proceeds which together with the required equity funds will meet all direct and indirect construction and related costs of the project. If during construction, UST determines that remaining Loan proceeds are insufficient to complete the Development, the Borrower shall contribute such additional equity as UST may require to satisfy the deficiency.

12. Loan Disbursements. Subject to the provisions relating to Budget and Equity requirements, construction proceeds will be advanced as construction progresses in accordance with a construction schedule to be prepared by Borrower and as approved by UST and its construction inspector. All advances shall be made in accordance with UST's construction inspector's certification that the security for which advances have been requisitioned have been completed in accordance with the preapproved plans and specifications. Requisitions shall be in the form approved by UST, and shall include the contractor's certification of work completed and partial lien waivers from all sub-contractors and suppliers for the previous month's work. UST will advance up to 90% of construction costs and 100% of approved indirect costs which shall be documented together with each requisition. Permitted indirect costs shall include only approved out-of-pocket sums incurred and payable to non-affiliated third parties. Requisitions may include sums for materials delivered to the premises to the extent they are properly secured thereat for inclusion within the Development within the next fifteen day period. As a condition of each advance, there shall be delivered to UST an endorsement of the title insurer indicating that the mortgaged premises are free from all liens or notices of contract. All disbursements shall be made directly into an account of the Borrower at UST and shall be considered for advance no later than ten days after requisitions are received.

13. Principal Repayment and Partial Releases. In consideration for UST releasing its interest in the condominium units as they are sold, the Borrower shall pay to principal an amount equal to 95% of the unit sales price less any deposits previously paid, provided that all deposits have been used to defray project costs. The minimum sales prices of the individual units are to be agreed upon by UST and the Borrower. There shall be no requirement to deliver partial releases in the event there exists any default by the Borrower under the Loan documents. UST shall release its interest in the rental apartment units upon the payment to UST of all proceeds of refinance, provided such amount is not less than \$150,000.

14. Plans and Specifications. Two complete sets of plans and specifications shall be deposited with UST. The plans and specifications must be approved by UST and its construction inspector prior to any funds being advanced under the Loan Agreement. After approval, the plans and specifications may not be materially amended or changed without the prior written approval of UST. Prior to Loan closing, UST shall be supplied with a list of major sub-contractors and suppliers which list shall be updated no

less often than together with each requisition for advances. It shall be a condition of the closing of the Loan that the architects and/or engineers who prepare the plans and specifications authorize UST to utilize same without payment or cost in the event Borrower defaults under the Loan documents.

15. Reports. The Borrower shall deliver to UST quarterly reports of projected cash flow for the next ensuing three month period. Within sixty days following the close of each of Borrower's fiscal years, Borrower shall deliver to UST a balance sheet and income and expense statement relating to the Development enumerating all items of income and expense collected, paid and accrued for the period being reported. The Borrower shall supply UST with such additional documentation with respect to sales, construction progress, costs and completion budgets as UST may from time to time request.

16. Condominium Documents. The Mortgagor shall not submit the premises to condominium form of ownership pursuant to Mass. Gen. Laws Ch. 183A until all condominium documents have been approved by UST and the Federal Home Loan Mortgage Corporation. Inspection and approval by FHLMC will be required prior to the first advance of funds under the Loan. In addition to the approval of the physical premises, the Borrower will be required to make all necessary submissions to FHLMC to assure that individual end loans will meet all rules, regulations and warranties required by the FHLMC condominium mortgage purchase program. Necessary submissions will include, without limitation: the opinion of Borrower's counsel that the premises and governing documentation comply with all FHLMC requirements; association budget breakdowns completed on FHLMC Form 465; details outlining the proposed management plan for the condominium; requisite marketing plans and buyer profile statements; and developer and architect's certifications that all construction insofar as roads, utilities and amenities are concerned with respect to each phase of the Development have been completed in a satisfactory manner.

17. Construction Inspector. The services of an outside consulting engineer and/or architect will be employed by UST to: (a) review estimated construction costs and the plans and specifications and to determine the adequacy thereof, and to verify that there are fixed price subcontracts to cover all work and materials required for the Development, and (b) to certify in connection with requested advances that construction is in accordance with the original plans and specifications as approved by UST and other persons or entities. He will also certify that construction has reached a stated percentage of completion and, to such other matters in connection with the construction as UST may require. The cost of retaining such consultant shall be borne by the Borrower.

18. Survey and Opinions. Prior to closing, and from time to time UST will be furnished with a satisfactory survey of the premises depicting the following: that the bounds and measurements shown on the plan are correct; that the title lines and actual lines of possession are the same; the location of the foundations of the building then in place; the proposed location of all additional improvements to be constructed upon the premises contemplated by the approved plans and specifications; the location of all means of ingress to and egress from the premises; the actual and/or planned location of all utilities services from the premises to the nearest public road or right-of-way, and if from the premises to the public right-of-way they pass over land owned by others, said passage shall be by means of valid, recorded

easement not subject to divestiture; the bounds of any areas submitted to the Federal Flood Disaster Protection Act and any other area restricting use; the location of all easements and takings affecting the premises; and depicting that no encroachment over any property lines or over any easements, servitudes or rights-of-way exist. The survey shall be certified to by a licensed professional engineer acceptable to UST.

Prior to closing, a certificate of a licensed professional engineer satisfactory to UST shall be delivered to UST certifying to the following: 1) the availability of utilities services, storm drainage and sewage facilities sufficient to adequately service the premises; 2) that the intended improvement of the premises with the Development and the intended use thereof consistent with the approved plans and specifications complies with all applicable zoning, building code, health, fire, safety and environmental statutes, codes, by-laws and regulations.

Prior to closing there shall be delivered to UST the following opinions of Borrower's counsel: 1) the improvement of the premises with the Development do not violate and are permitted by the applicable zoning and state and local regulations governing the premises; 2) all Loan closing documents have been validly authorized and executed by and on behalf of the Borrower and the guarantors; 3) all Loan closing documents are enforceable in accordance with their terms.

19. Hazardous Waste Existence. Satisfactory evidence indicating that soil tests did not indicate that the premises have been used as a dump site for hazardous waste such that would cause Borrower to incur any liability under M.G.L. ch. 21E entitled Massachusetts Oil and Hazardous Material Release Prevention and Response Act of 1983, along with a written representation and warranty from Borrower to that no such hazardous waste materials have been deposited on the premises. UST shall also require affirmative title insurance coverage with respect to there being no liens under M.G.L. Ch. 21E.

20. Permits. Prior to closing the Borrower shall provide UST with satisfactory evidence that all required permits have been obtained.

21. Title Insurance. The first mortgage on the premises shall be insured by a title insurer acceptable to UST, which policy shall comply with the following: it shall be in the standard A.L.T.A. form; there shall be no exceptions for survey, easements or other use restrictions not shown on the survey; there shall be no inspection exceptions except in respect to improvements thereafter added; the standard form so-called pending disbursement exception shall be permitted; and there shall be no other exceptions which in the opinion of counsel to UST may have an adverse effect upon the use of all or any portion of the premises as contemplated.

22. Casualty and Liability Insurance. As a condition of closing, there shall be delivered to UST a builder's risk insurance policy, including liability and extended coverage, in amounts satisfactory to UST and payable to UST as first mortgagee. UST shall be furnished with evidence that flood insurance is not required for the property under the Federal Flood Disaster Protection Act. In the event that flood insurance is required, flood insurance written by a company satisfactory to UST and in an amount and form acceptable to UST shall be required.

23. Composition of Borrower. Prior to the closing of the Loan, Borrower shall submit to UST for counsel's approval certified copies of all documents relating to the organization and formation of all entities constituting the Borrower, and all amendments or modifications thereof. Subsequent to such submission, there shall be no further amendment or modification of any such documents and agreements without the prior written approval of UST. Any change in the organization or composition of the entities constituting the Borrower shall be subject at all times to the prior written approval of UST.

24. Closing Documents. All closing documents prepared to close the Loan contemplated hereby shall be in form and contain terms and provisions consistent with this letter and as required by counsel to UST.

25. Expenses. Whether or not the Loan is closed, all costs and expenses incurred in connection with the transaction, including, but not limited to, attorney's fees, title insurance and endorsement premiums, surveys, recording fees, documentary stamps, any taxes, brokerage commissions, UST construction inspector's fees, and any and all other expenses incurred by UST in the ordinary course in connection with the loan shall be paid by the Borrower.

26. UST Counsel. Counsel engaged to represent the Bank in this transaction is Bruce Ramsey, Esq. of Peabody & Brown, One Boston Place, Boston, MA (723-8700). The responsibility of UST's attorney is limited to protection of the interest of UST notwithstanding the fact that the Borrower shall be obligated to pay the legal fees of UST's attorney. Further, UST assumes no responsibility to the Borrower for the acts or omissions of their attorney. Borrower may at his own expense engage an attorney to represent his interests in this transaction.

27. Additional Provisions.

A. Prior to the Loan closing, the Borrower will complete a mortgage application on the form required by UST.

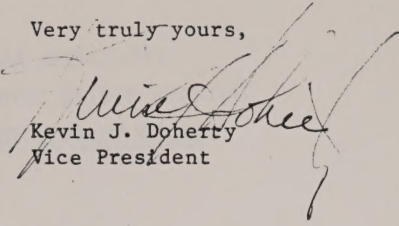
B. Neither this commitment nor any interest herein may be assigned or transferred by the Borrower.

C. While the Loan remains outstanding, no portion of the premises may be sold (except in connection with the sale of condominium units for which partial releases are payable to UST in accordance with the terms satisfactory to UST.) While the Loan remains outstanding, there shall be no other liens on the collateral granted by the Borrower except such as granted to UST hereunder. The sale, transfer or dilution of any of the ownership interests in the Borrower shall be a default under the Loan documents.

28. Acceptance and Term of Commitment. To be valid, this commitment must be accepted and returned to UST along with the \$10,000 commitment fee no later than at the close of business on July 23, 1984.

This Loan hereby committed must be closed on or before September 15, 1984.

Very truly yours,


Kevin J. Doherty
Vice President

The above commitment is hereby accepted:

Jonathan G. Davis

Eliot Conviser

Roger Lang

Boston Center for the Arts, Inc.

By _____

Date _____

ARTS PLAZA ASSOCIATES
ST. CLOUD - MYSTIC BRIDGE BUILDING
PROFORMA DEVELOPMENT COSTS

Acquisition		\$ 37,500
Construction:		
23 Condominium Units @ \$50/sf	1,000,000	
9 studio units @ \$30/sf	200,000	
10,000 sq. ft. - commercial space		
@ \$35/sf	350,000	
Common Area & Contingency	<u>250,000</u>	1,800,000
Architectural & Engineering		120,000
Legal		35,000
Construction Supervision		50,000
Marketing		25,000
Financing Fees and Interest		<u>232,500</u>
TOTAL DEVELOPMENT COSTS		\$2,300,000

